

BOARD OF APPEALS CASE NO. 5542

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BEFORE THE

APPLICANTS: Donald & Carroll Hess

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ZONING HEARING EXAMINER

REQUEST: Special Exception to allow
professional services in the Village Residential
District

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OF HARFORD COUNTY

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HEARING DATE: November 6, 2006

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Donald Hess & Carroll Hess, are seeking a Special Exception, pursuant to Section 267-53H(6) of the Harford County Code, to allow professional services in the VR District.

The subject property is located at 2407 Baldwin Mill Road, Fallston, Maryland 21047, in the Fourth Election District, and is more particularly identified on Tax Map 47, Grid 1B, Parcel 376. The parcel contains approximately 1.736 acres.

The Applicant, Donald Hess, appeared and testified that the subject property has been in his family for 50–55 years. His grandparents moved there over 50 years ago. His parents lived there from 1970 until his mother died in October of 2005 and his father in February of 2006. When the application was originally filed, the Applicants' mother's estate had been finalized, but their father's was still pending. Now both estates have been settled, and the Application has been amended to include as additional Applicants, two limited liability companies owned by the Applicant and his brother, Carol Wendell Hess, the Co-Applicant (*See Applicants' Exhibit 8*).

Mr. Hess testified that he is requesting a special exception to allow professional services in the VR District so that he and his brother can rent out the property, because their parents requested they keep it in the family, and not sell it after their deaths. They do not yet have a specific tenant in mind, because for marketing purposes it is preferable to obtain special exception approval prior to searching for a prospective tenant. He noted that it usually takes between 3-6 months to obtain special exception approval.

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The subject application was originally filed on May 16, 2006; however, the hearing was previously postponed. Mr. Hess referenced the Site Plan, designated as Attachment 4 to the Department of Planning and Zoning Staff Report, in describing the property as an isolated parcel located at the triangle of three roads.

The witness indicated that the subject property is zoned VR/Village Rural. He also noted that professional services are allowed as special exception uses in the VR District provided a buffer yard of ten feet is provided between the parking area and any adjacent residential lot, and the gross floor area does not exceed 5,000 square feet. According to Mr. Hess, the only residentially used adjacent property is located to the east of the subject site. That parcel, which is also zoned VR, previously obtained a special exception for professional services, in Board of Appeals Case No. 4269, to allow a dental office in a VR District (*See Staff Report Attachment 13*).

Mr. Hess testified that the existing entrance to the subject property curves off to the left when approached from an easterly direction on MD Route 165. The drive itself is wide enough to accommodate two-way traffic. He further testified that he had depicted the intended parking areas on the site plan designated as Staff Report Attachment 4, by marking them with small circled numbers. All of the proposed parking is located on the west side of the subject property, approximately 200 feet from the only adjacent dwelling. In addition, the witness stated that the gross floor area of the existing house is just under 1,800 square feet. Although the Applicants do not necessarily intend to utilize both stories for professional services at this time, they are seeking approval to do so, to allow them to increase the size of their rental space at a later date.

Mr. Hess indicated that he had reviewed the Standards Guides and Limitations set forth in Harford County Code Section 267-9I, and made the following comments with regard to those provisions. First, he stated that any tenant eventually identified by the Applicants will likely operate an 8:00 am. to 5:00 pm. type business which will create little traffic. (*Factor 2*) Next, professional services are permitted in the VR District, and are generally less intensive than other uses permitted within that district. (*Factor 3*). The proposed use will not result in any odors, dust, gas, smoke, fumes, vibration, glare or noise which would impact surrounding properties (*Factor 4*), or have any significant impact on public facilities.

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In addition, the subject property utilizes a private well and septic system. An office use of the type proposed would result in less use of the well and septic system than would a residence with several children. (*Factor 5*).

The witness noted the Staff Report concluded that the proposed use is consistent with both generally accepted planning principals and practices (*Factor 6*) and the 2004 Master Plan (*Factor 8*).

He also noted that the closest school, Youth Benefit, is 1½ to 2 miles away, and the closest church is ¼ to ½ mile away. (*Factor 7*) According to the witness, the proposed use will create no environmental concerns or negative impact on any sensitive natural features as the entire property consists of mowed lawn (*Factor 9*). Finally, the witness stated that there are no cultural or historic landmarks in the immediate vicinity of the subject property (*Factor 10*).

Mr. Hess further testified that he had reviewed the Department of Planning and Zoning Staff Report, and that he agreed with all proposed conditions set forth therein except Condition Number Four. With regard that condition, the Applicant testified that he would prefer the entrance drive not come in the back way from Scarff Road, as that would not be a nice area from which to enter the property. Instead, the Applicants are requesting that Condition No 4 be modified to allow them to access the property directly from Baldwin Mill Road. He explained that the family's original property contained only one deed. When they leased the west side of the property to B B & T Bank on Baldwin Mill Road 32 years ago, they installed a separate septic reserve area on that portion of the property. Now, due to changes in the law regarding septic reserve area sizes, they are able to deed a portion of that septic reserve back to the subject property, thereby allowing direct access from Baldwin Mill Road.

Mr. Anthony McClune, Deputy Director, Planning and Zoning, appeared and testified for the Department regarding the findings of fact and recommendations made by that agency. The Department reviewed the Application and Attachments, visited the site and surrounding area, prepared photographs and submitted an aerial photograph in connection with its investigation. It recommended approval of the subject application in its October 26, 2006 Staff Report, subject to five conditions set forth therein.

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According to Mr. McClune, Rural Villages are “areas of concentrated residential, commercial, and institutional uses located within the agricultural and rural residential areas.” They are designed to “support the character and economy of the surrounding communities by providing necessary goods and services.” Mr. McClune stated that professional services are allowed in the VR District as special exception uses provided all Code requirements are met. He also indicated that the Applicants can meet or exceed all standards set forth in Harford County Code Section 267-53(H)(6) with regard to such uses. According to the witness, the only adjacent residentially used parcel is located to the east of the subject property. That parcel was the subject of Board of Appeals Case No: 4269, in which the contract purchaser requested and received a special exception to allow a dental office in the V R District. However, due to unforeseen circumstances, that use was never actually commenced. The witness also stated that there is ample room for the buffer yard required by Code Section 267-53H(6), and that the landscape plan submitted for review through the Development Advisory Committee would be required to show plantings within that buffer sufficient to screen the adjacent residential use.

Mr. McClune next testified that the Department had considered all provisions set forth in Harford County Code Section 267- 9I in connection with subject request, and determined that the proposed special exception use meets all requirements of that provision. According to the witness, professional services are a very limited uses, and area traffic would not be impacted due to the limited size of the proposed professional service facility.

With regard to Applicants’ proposed modification of Condition No. 4, the witness testified that the Department is willing to accept Exhibit 9 as a substitution for Exhibit 4 to the Staff Report. He further stated that the Department agrees with Applicants’ proposal to deed a portion of the septic reserve area back to the subject parcel, to be used for ingress and egress to the site. In addition, Mr. McClune testified that upon receipt of the aforesaid request, he visited the subject property. During that visit he determined that the property sits considerably higher than Scarff Road, and significant grading would be required in order to access the property from that location. However, he testified that accessing the property from MD Route 165 would be an acceptable alternative, as that location appears to have adequate site distance.

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With regard to the Department's proposed Condition Number 2, Mr. McClune testified that because the subject property is fairly flat, the Department believes that all necessary parking can be developed within in the circled areas designated by the Applicants on Staff Report Attachment Number 4. Finally, the witness stated that, in his opinion, the proposed use, at the proposed location, would not cause any adverse impact to adjoining properties because the proposed use is compatible with other uses found in the area, and it meets or exceed all code requirements.

No testimony or evidence was introduced in opposition to the subject Application.

CONCLUSION

The Applicants, Donald Hess & Carroll Hess, are seeking a Special Exception, pursuant to Section 267-53H(6) of the Harford County Code, to allow professional services in the VR District.

The relevant Provisions of the Harford County Code with regard to the requested special exception use are set forth below.

Section 267-51 provides:

“Purpose.

Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

Section 267-52 provides:

“General Regulations

- A. Special exceptions require the approval of the Board in accordance with Section 267-9I, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.
- B. A special exception grant of approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.

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- C. Extension of any use or activity permitted as a special exception shall require further Board approval.
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof."

Section 267-53H(6) provides:

- (6) Professional services. These uses may be granted in the VR District, provided that:
 - (a) A buffer yard of ten feet is provided between the parking area and any adjacent residential lot.
 - (b) Gross floor area shall not exceed five thousand square feet.

Section 267-9I provides as follows:

- 1, "Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.
- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.

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- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise on the use of surrounding properties.
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.
- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.
- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.
- (10) The preservation of cultural and historic landmarks.”

The Court of Appeals established the standard for determining whether to grant a special exception in the case of *Schultz v. Pritts*, stating that

“...[t]he special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

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Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. (*Emphasis in original*) 291 Md. 1, 11, 432 A.2d 1319 (1981).

The *Schultz* court further held that “the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327; *citing, Anderson v. Sawyer*, 23 Md. App. at 624-25, 329 A. 2d at 724 (1974) and *Deen v. Baltimore Gas & Electric Co.*, 240 Md. 317, 330-31, 214 A.2d 146 (1965).

The Hearing Examiner finds that the Applicants have met their burden of proving that the requested use meets the standards and requirements prescribed by Section 267-53H(6) of the Harford County Code. The subject parcel is zoned VR. Professional services may be granted in the VR District, provided that a buffer yard of ten feet is provided between the parking area and any adjacent residential lot, and the gross floor area does not exceed five thousand square feet. The proposed parking areas are located on the western side of the subject property, over 200 feet from the only adjacent residentially used property. That parcel itself formerly received a special exception in Board of Appeals Case No. 4269 to allow a dental office in a VR District. In addition the landscape plan submitted for review through the Development Advisory Committee would be required to show plantings within the buffer area sufficient to screen the adjacent residential use. The proposed square footage of the existing dwelling is just under 1,800 square feet, and no additions or changes are proposed to that structure. The gross square footage of the proposed professional service use is therefore less than 5,000 square feet.

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The Hearing Examiner finds that the proposed use, at the proposed location would not adversely impact adjoining properties, or have any greater impact at this location than it would have elsewhere in the VR District. The subject property is part of an isolated triangle of land located between three roads. It fronts on Fallston Road to the north and Old Fallston and Scarff Road to the south. The residentially used parcel to the east is also zoned VR. The VB/Village Business zoned parcel to the west contains a bank and an office.

The Hearing Examiner adopts the findings of the Department of Planning and Zoning, that the proposed use meets all criteria set forth in Section 267-9I of the Harford County Code. The proposed professional service use is compatible with the surrounding neighborhood, which contains other retail and service uses. It is also consistent with generally accepted planning principles and the 2004 Master Plan. Professional services are allowed in the VR District as special exception uses, and the Applicant meets or exceeds all Code requirements for these uses. Any traffic generated by the requested use would be minimal, and the proposed access point onto the property from Baldwin Mill Road has adequate site distance. The proposed use should not create any odors, dust, gas, smoke, fumes, vibration, glare or noise. Adequate public services are available, and the subject property utilizes a private well and septic system. The proposed use will have no impact on public structures or environmental or sensitive natural features, and there are no cultural or historic landmarks in the immediate vicinity of the subject property.

For the reasons set forth above, the Hearing Examiner recommends approval of the Application, with the following conditions:

1. The approval is limited to a professional service use.
2. The Applicants shall submit a detailed site plan to be reviewed and approved through the Development Advisory Committee (DAC). The site plan shall clearly show an acceptable parking area.
3. The Applicants shall provide a landscaped buffer yard along the easterly property line. A landscaping plan shall be submitted to the Department of Planning and Zoning for review and approval.

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4. Access to the property shall be from Baldwin Mill Road. The driveway shall be a minimum of 20 feet wide to provide for two-way traffic.
5. The Applicants shall obtain all necessary permits and inspections for the conversion of the existing dwelling.

Date January 4, 2007

Rebecca A. Bryant
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on FEBRUARY 2, 2007.